IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 3601 of 2006
Date of decision: August 28, 2006

Gurcharan Kaur --- Petitioner

Versus

Sucha Singh and others --- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Vikram Aggarwal, Advocate for the petitioner.

Mr. R.K. Battas, advocate for respondent No.1.

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JUDGMENT

In this petition filed under Article 227 of the Constitution of India prayer is for quashing impugned order dated 5.5.2006 (Annexure P-6) passed by Civil Judge (Junior Division), Patiala whereby an application filed by defendant Nos. 1 to 9 for striking out the affidavit dated 25.1.2006 filed as rebuttal evidence and another application filed by defendant No.15 i.e. the present petitioner under Order 18 read with Section 151 of the Code of Civil Procedure for striking out affidavit dated 25.1.2006 have been dismissed by the trial court.

Learned counsel for the petitioner submitted that plaintiff-respondent No. 1 had earlier filed an affidavit dated 15.12.2004 and the same was declined to be taken on record vide order dated 31.8.2005 passed by the Civil Judge (Junior Division), Patiala wherein it was held that the plaintiff had no right to lead evidence in affirmative in the garb of rebuttal

evidence. Learned counsel for the petitioner further submitted that the said order was affirmed by this Court and the Civil Revision filed against that order was also dismissed. The counsel then argued that thereafter the case was fixed for rebuttal evidence of the plaintiff but he did not produce any rebuttal evidence on 20.9.2005, 14.10.2005, 22.11.2005, 13.12.2005, 3.1.2006, 17.1.2006, 25.1.2006, 7.2.2006, 15.2.2006. On 25.2.2006 for which the suit was posted from 15.2.2006, the plaintiff-respondent by way of rebuttal evidence again filed an affidavit dated 25.1.2006. The counsel thus submitted that affidavits dated 15.12.2004 and 25.1.2006 are identically worded and the trial court ought to have declined to take affidavit dated 25.1.2006 on record and, therefore, the impugned order dated 5.5.2006 (Annexure P-6) runs contrary to the earlier order dated 31.8.2005 and the same is thus liable to be set aside.

Counsel appearing for plaintiff-respondent No.1 however, on the other hand supported the impugned order and prayed for dismissal of the revision petition.

I have heard learned counsel for the parties and perused the record. A perusal of the affidavit dated 15.12.2004, a copy of which has been placed on record as Annexure P-1 and another affidavit dated 25.1.2006, a copy of which has been placed on record of this revision petition as Annexure P-3 shows that the contents of para No.7 of the earlier affidavit dated 15.12.2004 and those of para No.1 of the affidavit dated 25.1.2006 are identical. The prayer for taking the earlier affidavit dated 15.12.2004 on record having been declined by the trial court vide order dated 31.8.2005, the impugned order allowing the plaintiff-respondent to tender affidavit by way of evidence in the affirmative in the garb of rebuttal evidence thus cannot be sustained. The affidavit dated 25.1.2006 (Annexure P-3) could not have been permitted to be taken on record.

In view of the above, the revision petition is accepted. The impugned order dated 5.5.2006 is set aside. Since the suit pertains to the year 1991, the trial court is directed to dispose of the same within three months i.e. on or before December 31, 2006.

(AJAY KUMAR MITTAL)
JUDGE

August 28, 2006
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